

REMARKS

Claims 1-14 and 16-21 are pending. Of these, claim 1 is independent. Claim 1 is amended. Support for this amendment is found in the specification, drawings and claims as originally filed. Reconsideration of presently pending claims 1-14 and 16-21 is respectfully requested in light of the following remarks.

Rejections under 35 U.S.C. § 102

The final Office Action indicated that claims 1-4 and 16-18 were rejected under 35 U.S.C. §102(b) as being anticipated by US Patent No. 5,913,859 to Shapira (“Shapira”).

As set forth at MPEP §2131, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” While Applicants maintain that the final Office Action did not establish a *prima facie* rejection, in order to advance prosecution, Applicants have amended claim 1 as set forth above. Accordingly, claim 1 now recites:

1. A surgical instrument for the dissection of bone or other tissue having a motor with a power output, the surgical instrument comprising:

a dissection tool having an elongated shaft with a dissection area disposed adjacent a distal end and a coupling area disposed adjacent a proximal end, the dissection tool having a flexible portion along at least a portion of the elongated shaft;

a coupling assembly configured for coupling the power output to said coupling area of said tool; and

an angled attachment tube having a proximal portion for coupling to said coupling assembly and an internal passage extending from said proximal portion to an opposite distal portion, the attachment tube positioned along at least a portion of said elongated shaft and substantially supporting a portion of said elongated shaft disposed adjacent said dissection area, said internal passage including a longitudinal curved portion disposed between said proximal portion and said distal portion, said angled attachment tube supporting said elongated shaft in a longitudinally flexed configuration corresponding to said curved portion such that the flexible portion of the dissection tool is at least partially aligned with the longitudinal curved portion of the angled attachment tube,

wherein said attachment tube is movably coupled to said coupling assembly.

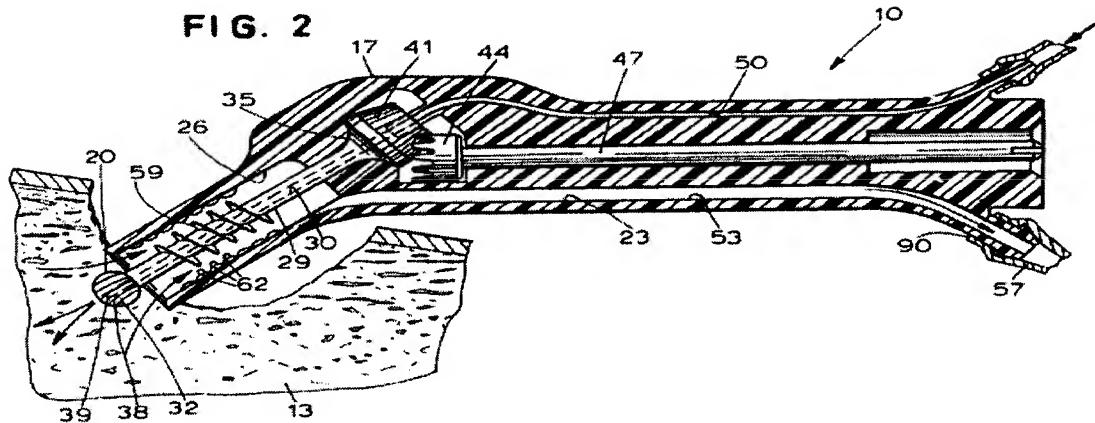
Claim 1 is amended herein to require that the dissection tool have an elongated shaft with “a flexible portion” and that the “angled attachment tube support[s] said elongated shaft in a longitudinally flexed configuration corresponding to said curved portion such that the flexible portion of the dissection tool is at least partially aligned with the longitudinal curved portion of the angle attachment tube.”

This is nowhere disclosed in the Shapira reference. Even if the Examiner were to consider the hollow shaft 29 and the shaft 47 of Shapira to be the claimed dissection tool, the hollow shaft 29 and the shaft 47 together or alone do not have a flexible portion in a “flexed configuration corresponding to said curved portion such that the flexible portion of the dissection tool is at least partially aligned with the longitudinal curved portion of the angled attachment tube,” as recited in claim 1. Therefore, claim 1 is allowable over the Shapira reference.

In addition to lacking the flexible portion in a “flexed configuration, the Shapira reference lacks other features as set out in the previously filed Response to Final Office Action dated December 21, 2007. Some of the Remarks from the previous filed response are reproduced below for the Examiner’s consideration, but have been updated to include the revised language of claim 1.

With respect to independent claim 1, Shapira at least fails to disclose “a dissection tool having an elongated shaft . . . [and an] angled attachment tube supporting said *elongated shaft in a longitudinally flexed configuration* corresponding to said curved portion” (emphasis added). The Final Office Action states that the claimed attachment tube is equivalent to the housing 17 of Shapira and that the claimed elongated shaft of the dissection tool is equivalent to the conduit 30 of Shapira. (Final Office Action, p. 2). Referencing Fig. 2 below and the accompanying description, there is no indication of conduit 30 (or hollow shaft 29) of Shapira being “longitudinally curved.” Instead, as shown in Fig. 2, it appears that conduit 30 and shaft 29 extends only linearly within cavity 26. Therefore, Shapira does not include the limitation of “a dissection tool having an elongated shaft . . . [and an] angled attachment tube supporting said *elongated shaft in a longitudinally curved configuration* corresponding to said curved portion,” as required by Applicants’ previously presented claim 1. Emphasis added.

FIG. 2



With further respect to independent claim 1, Shapira at least fails to disclose a dissection tool having “a dissection area disposed adjacent a distal end” and an “attachment tube . . . substantially supporting a portion of said elongated shaft disposed adjacent said dissection area.” As seen in Fig. 2, Shapira shows a housing 17 having a cavity 26 with a hollow shaft 29 disposed therein where the hollow shaft 29 receives a burr 38 used for dissection. The Final Office Action states that Shapira discloses, “[an] attachment tube positioned along at least a portion of said elongated shaft (Fig. 2) and substantially supporting a portion of said elongated shaft disposed adjacent said dissection area (Fig. 2) . . .” (Final Office Action, p.2). However, there is no indication in Fig. 2 or the accompanying description of Shapira of the housing 17 substantially supporting a distal portion of hollow shaft 29 adjacent the dissection area. Instead, it appears from Fig. 2 that hollow shaft 29 is only supported *proximally* by housing 17 adjacent the drive gear 44. Therefore, Shapira does not include the limitation of a dissection tool having “a dissection area disposed adjacent a distal end” and an “attachment tube . . . substantially supporting a portion of said elongated shaft disposed adjacent said dissection area,” as required by Applicants’ previously presented claim 1.

Therefore, for at least these reasons it is respectfully submitted that the §102(b) rejection of claim 1 is not supported by the reference, and should be withdrawn. Claims 2-4 and 16-18

should be allowable as well since they depend from and further limit claim 1. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of claims 1-4 and 16-18.

Rejections under 35 U.S.C. § 103

Claims 5, 6, and 19-21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shapira. Claims 7-11 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shapira in view of Tidwell et al. (US Patent No. 5,989,257). Claims 12-14 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shapira in view of Tidwell et al. (US Patent No. 5,989,257) in view of Wright (US Patent No. 5,340,129). These rejections are respectfully traversed. As established above, Shapira does not disclose all of the limitations of claim 1. Further, the combination of Tidwell and Wright does not correct this deficiency. Accordingly, even when combined the references fail to disclose all of the recited elements of independent claim 1. Claims 5-14 and 19-21 depend from and further limit independent claim 1 and therefore should be patentable over the cited references.

Conclusion

A notice of allowance of claims 1-14 and 16-22 is respectfully requested.

If the Examiner believes a telephone conversation would be useful for advancing prosecution of this application, he is invited to telephone the undersigned at 972-739-6969.

Deposit Account Number 08-1394 can be used for any over payments or under payments.

U.S. App. No. 10/698,177
Reply to Office Action of 10/30/07 and Advisory Action of 2/19/08

The Office Action contains characterizations of the claims and the related art to which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in this or any other Office Action.

Respectfully submitted,



Dustin T. Johnson
Registration No. 47,684

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HAYNES AND BOONE, LLP
Customer No.: 46334
Telephone: 972-739-6969
Facsimile: 214-200-0853
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Diane Sutton
Diane Sutton